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**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

**JOINT PETITION OF THE CITY OF)
PIKEVILLE AND MOUNTAIN) CASE NO. 2006-00123
WATER DISTRICT FOR THE)
TRANSFER OF CERTAIN)
WASTEWATER FACILITIES AND)
RELATED DEBT)**

**REPLY TO JOINT PETITIONERS RESPONSE
TO MOTION TO INTERVENE
OF THE CITY OF PRESTONSBURG**

City of Prestonsburg, acting by and through its Utilities Commission, the Prestonsburg City’s Utilities Commission (collectively, the “Movant”), by counsel, files its Reply to the response of the City of Pikeville (individually, “Pikeville”) and Mountain Water District (collectively “Joint Petitioners”) to Movant’s Motion to Intervene.

1. In the “Interlocal Agreement Relating to Water and Sewer Service Along U.S. 23 in the Harold/Betsy Layne/Mare Creek Area of Floyd County and the Mossy Bottom/Coal Run Area of Pike County, Kentucky” (the “Interlocal Agreement”), the City of Pikeville entered into a contract with Sandy Valley Water District (“Sandy Valley”), a public utility, as well as others, to provide for potable water and waste water service.

2. In the fourth whereas clause of the Interlocal Agreement, the parties to the Interlocal Agreement state that “... by a separate agreement with Mountain Water District, Pikeville shall soon take ownership and all attendant obligations of Mossy Bottom/Coal Run Area Sewer Collection System and incorporate same into the system, thereby allow for additional extensions to its system, including the Sewer Project [the

reference is to Floyd County's sewer project] that is the subject of this Agreement." This whereas clause and the remaining portions of the Interlocal Agreement clearly contemplate that the takeover of the Mossy Bottom/Coal Run Area Waste Water System is an integral portion of the contemplated takeover of the Sandy Valley System by the City of Pikeville.

3. In Section B (2), Sandy Valley and Pikeville agreed to a management arrangement whereby Pikeville would "... assume responsibility for daily operations of Sandy Valley's facilities ..." effective February 1, 2006. Thus, the Interlocal Agreement authorized Pikeville to take control of daily operations effective February 1, 2006. Pikeville has not filed an application for the Commission's approval for a transfer of control.

4. In the last whereas clause of the Interlocal Agreement, Sandy Valley agrees to join with Pikeville and Southern in making application to the "Kentucky Public Service Commission" to authorize the transfer of that portion of Sandy Valley's water facilities located in Pike County to Pikeville and that portion located in Floyd County, to Southern Water and Sewer District ("Southern").

5. Movant has been monitoring the docket of the Public Service Commission in anticipation of the joint application of Sandy Valley, Pikeville and Southern before the Public Service Commission. Since the Interlocal Agreement was first made public by its recordation on January 4, 2006, in the office of the Floyd County Clerk, Movant has been waiting to file its Motion to Intervene. Since the Interlocal Agreement became public knowledge, the Movant has asserted its opposition to the Interlocal Agreement to all the

parties to the Interlocal Agreement in private meetings and in a public meeting sponsored by the Big Sandy ADD.

6. At Movant's request, representatives of the Environmental and Public Protection Cabinet, Division of Water (the "Cabinet") met with a representative of the Movant to discuss issues related to the Interlocal Agreement. At that meeting, Movant learned that the Cabinet's representatives believed that the pending case included the joint application of all parties to the Interlocal Agreement. Due to this misunderstanding by the representatives of the Cabinet, Movant was compelled to intervene in this pending case because this case has become intertwined with the Cabinet's deliberations concerning the re-assignment of Movant's waste water service territory.

7. Due to Movant's expected opposition to a joint application involving Sandy Valley, Pikeville has attempted to inappropriately bifurcate the approval process for an integrated project to circumvent Movant's opposition.

8. The parties to the Interlocal Agreement are attempting to circumvent Movant's lawful rights because the execution of the Interlocal Agreement by Sandy Valley caused Sandy Valley to breach its Water Contract dated October 1, 1997 with Movant. Sandy Valley is in breach of paragraph 21 of said Water Contract since paragraph 21 prohibits Sandy Valley from taking any action "... so as to make Prestonsburg [Movant herein], directly or indirectly, a wholesale supplier to any other water system, without Prestonsburg's consent." The Interlocal Agreement was entered into by Sandy Valley without the knowledge or consent of Movant. Subsequent to the execution of the Interlocal Agreement, the parties to the Interlocal Agreement have requested Movant to give its consent, which Movant has refused to do.

9. The Court of Appeals of Kentucky held in the *City of Greenup v. Public Service Commission*, 182 S.W. 3d 535 (Ky. Ct. App. 2005), that the Commission has the authority to determine its own jurisdiction because the Commission is a quasi-judicial agency. The Interlocal Agreement initially provides for the transfer of control of the daily operations of a public utility and for the eventual transfer of the assets and associated debt of a public utility. Clearly, the Commission has jurisdiction over the Interlocal Agreement and the parties thereto.

10. Since the proposed transfer of assets and associated debt by the Joint Petitioners is part of a larger integrated project, Movant believes that a single proceeding is more appropriate to timely address all the issues for purposes of judicial economy.

11. In the alternative, if the Commission determines that Movant's Motion to Intervene is not appropriate to be consolidated with the Joint Petition of the City of Pikeville and Mountain Water District, the Movant requests that the Motion to Intervene be treated as a Complaint against the City of Pikeville, Sandy Valley Water District and Southern Water and Sewer District.

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that an original and ten copies of the foregoing Reply to the Response of the Joint Petitioners to the Motion of City of Prestonsburg to Intervene in the above-referenced case was mailed by first class mail, postage prepaid to Beth O'Donnell, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601; and copies were mailed to John N. Hughes, Esq., 124 W. Todd Street, Frankfort, Kentucky 40601 and Joseph G. Jacobs, Chairman of Sandy Valley Water District, P.O. Box 127, Betsy Layne, Kentucky 41605.

 4/19/06

Kipley J. McNally, Special Counsel for the
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City's Utilities Commission